IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1168 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANARSI DIPCHAND YADAV

Versus

PARIMAL CASTING INDUSTRIES

Appearance:

1. Special Civil Application No. 1168 of 1993

MR DM AHUJA for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 21/09/2004

ORAL JUDGEMENT

1. The petitioner workman challenges the judgment & award dated 6th January, 1992 passed by Labour Court, Ahmedabad in Reference (LCA) No: 2102 of 1986.

2. The petitioner (hereinafter referred to as 'the workman') was employed by respondent Parimal Casting

Industries, a partnership firm (hereinafter referred to as 'the firm') as Moulder. On 8th February, 1986 a quarrel took place between the workman and one another employee Harimansinh - a helper. The said Harimansinh lodged complaint with the firm against the workman that the workman had assaulted him in the incident in question. He also produced certificate of medical treatment taken by him at the Civil Hospital, Ahmedabad. Pursuant to the said complaint a disciplinary proceeding was initiated against the petitioner on 10th February, 1986. After holding inquiry the workman was found to be guilty of assault upon the complainant Harimansinh. By order dated 30th June, 1986 the workman was dismissed from service.

3. Feeling aggrieved the workman raised industrial dispute which came to be referred to the Labour Court, Ahmedabad and registered as Reference (LCA) No: 2102 of 1986. In the said Reference the workman filed Statement of Claim Exhibit-7. According to the said claim the workman was retrenched from service on 30th June, 1986. That the said retrenchment was unlawful, unwarranted and malafide. The workman claimed that he be reinstated in service with arrears of wages. The workman also made a specific statement that the workman was retrenched unlawfully on 30th June, 1986, without following due procedure. The said claim was contested by the firm. Pursuant to the documents produced by the firm at List exhibit-8 the workman vide exhibit-9 admitted that the domestic inquiry was held against him but did not challenge the legality of the disciplinary proceeding. He challenged the finding of guilt recorded against him. The workman was permitted to raise the said challenge. According to the workman, it was the complainant Harimansinh who had attacked the workman and the workman had hit the said Harimansinh in self-defence. In support thereof he produced a medical certificate. The workman also urged that the workman was a union leader. The firm, being apprehensive about the union activities of the workman, was bent upon removing the workman from service. The incidence in question was engineered by the firm. The complainant Harimansinh was also rewarded for the said incidence. The said allegations were not believed by the Labour Court. As to the medical certificate the Court observed that such certificate was not produced in the inquiry proceeding nor did the said certificate disclose any serious injury to the workman, except some superficial abrasion. The workman admitted that he had not lodged complaint against the complainant Harimansinh. The defence of self-defence raised by the workman was also not believed. The Labour Court came to

the conclusion that the workman was not retrenched as alleged but was dismissed from service for the guilt proved against him. As no other contention was raised the claim made by the workman has been dismissed.

4. Learned advocate Mr. Ahuja has submitted that the Labour Court having permitted the workman to challenge the finding of guilt recorded against him has erred in not believing the medical certificate produced by the workman; in not believing that the workman was attacked by the complainant Harimansinh and that the workman had to retaliate in self-defence. He has also submitted that the fact that no disciplinary proceeding was held against the complainant Harimansinh is a sufficient indication that said Harimansinh was a stooge for the firm and that he was acting at the instance of the partners in the firm. Mr. Ahuja has also submitted that the punishment of termination of service for a minor scuffle between two workmen was not warranted. The workman is therefore, entitled to reinstatement in service and the consequential benefits.

5. I am unable to agree with Mr. Ahuja. As recorded hereinabove, in the Statement of Claim filed by the workman he did not disclose the incidence of 8th February, 1986; the factum of disciplinary proceeding held against him and the finding of guilt recorded against him. On the contrary the workman alleged that he was wrongfully retrenched from service. Hence in my view the moment it was proved that the workman was not retrenched from service but was dismissed from service on disciplinary ground after holding due disciplinary proceeding nothing more was required to be done by the Labour Court, except to reject the claim made by the workman. However, the Labour Court did permit the workman to challenge the finding of guilt recorded against him and to adduce evidence in support of such challenge. Considering the evidence on record, oral and documentary, the Labour Court did not find any substance in the plea of self-defence raised by the workman. There was sufficient evidence on record to confirm the finding of guilt against the workman. The Labour Court did not believe the allegation of malafide and prejudice made against the partners in the firm. This Court exercising supervisory jurisdiction under Article 227 of the Constitution of India shall not interfere with the findings of fact recorded by the Court below on the basis of evidence on record. The finding of guilt recorded by the Labour Court can not be said to be perverse or based on no evidence as contended by Mr. Ahuja. It would not be out of place to mention here that before the Labour

Court the workman did not raise the question of propriety of punishment imposed upon the workman. As the Labour Court was not called upon to invoke jurisdiction conferred upon it by Section 11-A of the Industrial Disputes Act,1947, the said issue cannot now be raised before this Court.

6. One Shri. Hemendra M. Shah - a partner in the firm has filed counter affidavit. It is stated that pending the disciplinary proceeding against the workman and since his dismissal from service on 30th June, 1986 the workman is gainfully employed. He had been employed by various factories situated in Rakhial area of the city. The names of the factories are also mentioned. The said statements have not been controverted. In that view of the matter also the question of reinstatement in service or of payment of arrears of wages shall not arise.

7. In view of the above discussion, I see no merits in this petition. Petition is dismissed. Rule is discharged. There shall be no order as to costs.

Dt: 21-9-2004 (MS. R.M. DOSHIT, J)

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